

LEXSEE

**KEITH BAKER, INDIVIDUALLY, AND IAN BAKER, INDIVIDUALLY AND AS
REPRESENTATIVE OF THE ESTATE OF JEAN BAKER, Appellants, v. DR. SALAH
EL HAFI, AND CARDIOLOGY CLINIC, P.A., Appellees.**

NUMBER 13-03-397-CV

COURT OF APPEALS OF TEXAS, THIRTEENTH DISTRICT, CORPUS CHRISTI

2005 Tex. App. LEXIS 6362

**August 11, 2005, Memorandum Opinion Delivered
August 11, 2005, Filed**

NOTICE: [*1] PLEASE CONSULT THE TEXAS RULES OF APPELLATE PROCEDURE FOR CITATION OF MEMORANDUM OPINIONS AND UNPUBLISHED OPINIONS.

PRIOR HISTORY: On appeal from the Probate Court No. 1 of Harris County, Texas. *El Hafi v. Baker*, 164 S.W.3d 383, 2005 Tex. LEXIS 383, 48 Tex. Sup. Ct. J. 648 (Tex., 2005)

COUNSEL: For APPELLANT: Timothy D. Riley, RILEY LAW FIRM, Houston, TX.; Jack E. McGehee, James V. Pianelli, Joelle G. Kennedy, McGEHEE & PIANELLI, Houston, TX.

For APPELLEE: Trace Sherer, Christopher L. Farmer, HILBURN, SHORES & SHERER, Houston, TX.

JUDGES: Before Justices Hinojosa, Yanez, and Garza. Memorandum Opinion by Justice Garza.

OPINIONBY: DORI CONTRERAS GARZA

OPINION: MEMORANDUM OPINION

Memorandum Opinion by Justice Garza

Appellants, Keith Baker, individually, and Ian Baker, individually and as independent executor of the estate of Jean Baker, deceased, brought a medical malpractice suit against appellees, Dr. Salah El Hafi and Cardiology Clinic P.A., for the death of their mother. The case was tried before a jury, and a take-nothing judgment in favor of appellees was entered. On appeal, this Court concluded that veniremember 25 expressed bias during voir dire examination and reversed the take-nothing judgment based on the trial court's refusal to disqualify him. *Baker v. El Hafi*, No. 13-03-397-CV, 2004 Tex. App. LEXIS 7882, *1

(*Tex. App.—Corpus Christi, August 30, 2004*) (memorandum opinion), *rev'd and remanded*, *El Hafi v. Baker*, 164 S.W.3d 383, 48 Tex. Sup. Ct. J. 648 (Tex. 2005) (per curiam). Thereafter, the supreme court decided [*2] *Cortez ex rel. Estate of Puentes v. HCCI-San Antonio, Inc.*, 159 S.W.3d 87, 48 Tex. Sup. Ct. J. 480 (Tex. 2005). On petition for review, the supreme court applied its *Cortez* precedent, held that veniremember 25 was not biased, and reversed our decision. *El Hafi v. Baker*, 164 S.W.3d 383, 48 Tex. Sup. Ct. J. 648 (Tex. 2005) (per curiam). The case was remanded to this Court for consideration of whether veniremembers 31 and 34 were biased. *Id.* In light of the supreme court's conclusion regarding veniremember 25 and its precedent in *Cortez*, we conclude veniremembers 31 and 34 were not biased as a matter of law and, accordingly, affirm the judgment of the trial court.

Appellants argue the following exchange involving veniremembers 31 and 34 demonstrates bias as a matter of law:

COUNSEL: Anybody else on the last row?
How about in the row over here on the side?
Yes ma'am No. 31.

JUROR 31: Well, I sort of feel like the guy who just spoke [venire panel member 25], said it real well for me. But I'm in a personal situation where my brother-in-law just died as a result of a surgery that went bad and my sister-in-law is suing. And I was there for the whole time and know as [*3] much as she knows and I'm on the doctor's side. So you need to know that.

COUNSEL: Well, let me ask you: Do you feel like you would have a leaning in a little bit in favor of the doctor in this case based on your experience with your brother-in-law?

Was it your brother-in-law?

JUROR 31: Brother-in-law. I would want to be fair and I would want to hear everything, but I've just been in the situation.

COUNSEL: Okay.

JUROR 31: There were a lot of unanswered questions that still are unanswered, but I would give the benefit of the doubt to the doctor.

COUNSEL: Okay. Right. You're telling me that you would try to be fair, but as you sit there today you realize that your experience would be such you would probably have a tendency to give the benefit of the doubt to the doctor in most medical cases?

JUROR 31: Right. Because I'm in the middle of the real, live situation right now.

COUNSEL: Okay. Thank you for speaking up. Anybody else in the fifth row?

JUROR 34: I would have to second that. My father is a physician. So I've sort of grown up listening to a lot of discussion about the medical industry versus [*4] attorney industry.

COUNSEL: You're No. 34?

JUROR 34: That's correct. I'm sorry.

COUNSEL: And you feel like you would be leaning in favor of the doctor?

JUROR 34: I would like to tell you that I would be very impartial, but I just start off with leaning for the physician.

A bias is disqualifying if "it appears that the state of mind of the juror leads to the natural inference that he will not or did not act with impartiality." *Compton v. Henrie*, 364 S.W.2d 179, 182, 6 Tex. Sup. Ct. J. 232 (Tex. 1963). "The relevant inquiry is not where jurors start but where they are likely to end." *Cortez*, 159 S.W.3d at 94. A veniremember is not disqualified even though he states that "in a way," the defendant is "starting out ahead." *Id.* In reviewing the decision of the trial court, we must consider the entire examination, not just answers that favor one litigant or the other. *Id.* at 93.

Veniremember 31 stated that she felt like veniremember 25, who had stated he could relate to the defendant. She further added that her personal situation would cause her to give the benefit of the doubt to the doctor. But upon [*5] further examination by the court, she clarified she was referring to the doctor in her brother-in-law's case and not to Dr. El Hafi. She added she could be a fair and impartial juror.

Veniremember 34 agreed with number 31 and stated he would start off leaning for the physician. Upon further examination by the court, he also stated he could be fair and impartial.

We conclude the statements made by veniremembers 31 and 34 fall squarely within *Cortez* and do not amount to bias as a matter of law. Accordingly, we overrule appellant's remaining issues and affirm the judgment of the trial court.

DORI CONTRERAS GARZA,

Justice